

OSHTEMO CHARTER TOWNSHIP
ZONING BOARD OF APPEALS

MINUTES OF A MEETING HELD JULY 27, 2010

Agenda

VOLKEL – SECOND DWELLING ON A PARCEL – VARIANCE – 7280 WEST N AVENUE - (PARCEL NO. 3905-34-455-065)

YOUNG – NON-CONFORMING PARCEL BUILDABLE FOR A DUPLEX – 2111 NORTH DRAKE ROAD – (PARCEL NO. 3905-12-480-065)

CRIPPIN – COMBINATION OF PARCELS AND TWO DWELLINGS ON A PARCEL – 7597, 7599 AND 7533 WEST ML AVENUE – (PARCEL NOS. 3905-27-330-012, 3905-27-330-016 AND 3905-27-330-020)

FRAZIER – FRONT SETBACK VARIANCE – 7156, 7142 AND 7126 BATON ROUGE – (PARCEL NOS. 3905-27-484-162, 3905-27-484-152 AND 3905-27-485-140)

A meeting of the Oshtemo Charter Township Zoning Board of Appeals was held on Tuesday, July 27, 2010, commencing at approximately 3:00 p.m. at the Oshtemo Charter Township Hall.

MEMBERS PRESENT: Dave Bushouse
Robert Anderson
L. Michael Smith
Neil Sikora, First Alternate
James Sterenberg, Second Alternate

MEMBERS ABSENT: Roger Taylor
Cheri Bell

Also present were Jodi Stefforia, Planning Director; Chris West, Associate Planner; James W. Porter, Township Attorney, and five other interested persons.

Call to Order/Pledge of Allegiance

Mr. Smith, Acting Chairman, called the meeting to order at approximately 3:00 p.m., and the "Pledge of Allegiance" was recited.

Minutes

The Acting Chairman asked the members if they had a chance to review the minutes of May 25, 2010. Mr. Sikora noted that Dave Bushouse left prior to Item #5, but it was unclear in the minutes when that took place, given the minutes did not reflect items in numerical order. Attorney Porter said he would make a notation in the minutes as to when Mr. Bushouse left the meeting. A motion was made by Mr. Anderson, seconded by Mr. Sikora to approve the minutes, as revised. The Acting Chairman called for a vote on the motion, and the motion passed unanimously.

VOLKEL – SECOND DWELLING ON A PARCEL – VARIANCE – 7280 WEST N AVENUE - (PARCEL NO. 3905-34-455-065)

The Acting Chairman stated that the next item on the Agenda was a request for a variance from Section 66.150 of the Zoning Ordinance to allow a second dwelling on the property at 7280 West N Avenue, Parcel No. 3905-34-455-065. The Acting Chairman asked for a report from the Planning Department.

Ms. Stefforia informed the Board that the applicant was not available to attend and asked that this matter be tabled until August 24, 2010. Mr. Sikora made a motion to table the Volkel matter until August 24. The motion was seconded by Mr. Bushouse. The Acting Chairman called for a vote on the motion, and the motion passed unanimously.

YOUNG – NON-CONFORMING PARCEL BUILDABLE FOR A DUPLEX – 2111 NORTH DRAKE ROAD – (PARCEL NO. 3905-12-480-065)

The Acting Chairman announced that the next item on the Agenda was a request from Cavel Young for a variance from Section 66.201 to allow a parcel which has less than 200 feet of frontage to be considered buildable for purposes of adding on to the existing dwelling to make it a duplex at 2111 North Drake Road, Parcel No. 3905-12-480-065. The Acting Chairman asked for a report from the Planning Department.

Ms. Stefforia said that the applicant was not in the audience and asked if the Board wanted to proceed. The Board asked to proceed.

Ms. Stefforia then presented her report to the Board dated July 27, 2010, and the same is incorporated herein by reference.

Ms. Stefforia explained to the Board, because this was an expansion of a nonconforming use, she thought it was necessary to have the matter resubmitted to the ZBA for its consideration. Ms. Stefforia presented the Acting Chairman with two letters in opposition from neighbors, one opposing the increased density, and the second opposing a duplex in a single-family neighborhood. Ms. Stefforia pointed out that duplexes are permitted in the "R-2" zone and that the only issue presently before the Board was the fact that the subject property lacked the requisite front frontage.

Ms. Stefforia proceeded to review the criteria with the Board members, as more fully set forth in her report.

Mr. Sikora asked if the 97-foot of frontage included the easement which had been reserved. Ms. Stefforia said that it did. The Acting Chairman asked, if the variance were granted, whether the addition would meet the setback requirements. Ms. Stefforia said that the parcel was large enough to meet setback requirements.

Mr. Sterenberg asked if the house was built when the road was proposed. Ms. Stefforia said no; the home had been there for a number of years, and an easement for a proposed road was granted in 2005.

The Acting Chairman noted that the house had been at its present location for 30 years. Mr. Sterenberg asked if there was a new owner. Ms. Stefforia indicated that there was. Mr. Bushouse said that it was Mr. Thompson's daughter who had sold the home to the applicant in 2005.

Mr. Bushouse said his only concern was the easement, which would allow access to the balance of the property. He noted, when the rest of the property is developed and the road installed, then this home would have additional frontage which would allow the property to meet the zoning frontage requirements. He also stated that a single-family home and duplex are both permitted uses in the "R-2" District.

Mr. Bushouse asked if there were any code compliance problems. Ms. Stefforia said she did not believe there were. Mr. Bushouse asked about a previous duplex and whether it had been inspected for Building Code compliance. Ms. Stefforia indicated that it had. (Ms. Stefforia was referring to a duplex on M-43).

The Acting Chairman asked if the proposed attachment of a mobile home would meet code. Ms. Stefforia said it would have to meet the Building Code, as required.

The Acting Chairman asked if there was any public comment. Hearing none, he opened the meeting to Board deliberations.

Mr. Sikora said he was not sure that he wanted to take any action on this matter because it could set a precedent, and due to the absence of the applicant, he was not sure whether the applicant wanted to pursue it at the present time. Mr. Sterenberg concurred. Attorney Porter said that the Board's decision on this issue could very well set a precedent for the future.

The Acting Chairman said he would prefer that the road be put in before a duplex was approved for the subject property.

Mr. Sikora again said he was concerned about setting an adverse precedent. Mr. Anderson said he concurred. It was the consensus of the Board to wait until the applicant could appear, and at the direction of the Acting Chairman, the item was tabled until later in the meeting.

CRIPPIN – COMBINATION OF PARCELS AND TWO DWELLINGS ON A PARCEL – 7597, 7599 AND 7533 WEST ML AVENUE – (PARCEL NOS. 3905-27-330-012, 3905-27-330-016 AND 3905-27-330-020)

The Acting Chairman indicated that the next item on the Agenda was a request for a variance from Section 66.150 of the Zoning Ordinance to allow a parcel combination resulting in two dwellings on a single parcel. The request involved properties located at 7597, 7599 and 7533 West ML Avenue, Parcel Nos. 3905-27-330-012, 3905-27-330-016 and 3905-27-330-020. The Acting Chairman asked for a report from the Planning Department.

At this time, Ms. Stefforia noted the applicant was not present. Therefore, the Acting Chairman said they would proceed with the next item.

FRAZIER – FRONT SETBACK VARIANCE – 7156, 7142 AND 7126 BATON ROUGE – (PARCEL NOS. 3905-27-484-162, 3905-27-484-152 AND 3905-27-485-140)

The Acting Chairman said the next Agenda item was a variance request from Section 64.200 of the Zoning Ordinance to allow a reduced front setback on properties at 7156, 7142 and 7126 Baton Rouge, Parcel Nos. 3905-27-484-162, 3905-27-484-152 and 3905-27-485-140. The Acting Chairman asked for a report from the Planning Department.

Mr. West submitted his report dated July 27, 2010, to the Board, and the same is incorporated herein by reference. At the conclusion of Mr. West's report, the Acting Chairman asked if there were any questions of Mr. West.

Mr. Anderson asked about the three lots at issue and where the lots were located in relation to the vacant lots not being considered at the present. Mr. West pointed those lots out on the map. The two other vacant lots were east of the subject properties.

Mr. Bushouse asked if the previous minutes or review of the LaSalle Plat had referenced anything in the Engineer's report regarding suitability of these sites for development. Mr. West said he did not see anything in the report which would indicate that these sites were unbuildable.

The Acting Chairman asked to hear from the applicant. Mr. Lon Frazier introduced himself to the Board. He said the subject properties were very steep, steeper than other lots in the plat. He noted that the properties have been listed for three years, and the properties were unbuildable without some degree of variance. He said he was not sure whether a 10-foot setback or a 20-foot setback would be appropriate, but he asked the Board for some type of relief.

The Acting Chairman called for public comment.

Mr. Allan Rathburn introduced himself to the Board. He said he lived at 7100 Baton Rouge, just east of the subject properties. He said he was opposed to any variance and explained that he had met all the requirements to build upon his property, including a lot of fill and additional landscaping costs. He said he thought placing these three homes so close to the road would be very noticeable and not in keeping with the character of the neighborhood and would constitute a spot variance.

Mr. Daniel Corse of 7103 Baton Rouge said he thought a 10-foot setback was ridiculous. He said if that request was granted, the only thing he would see on the curve of Baton Rouge would be the three homes. He noted that, when he lived in California, people built on lots much steeper than currently proposed, and he thought the matter could be handled with appropriate engineering and a good builder. He said that the variance should be denied, as it was to the original developer years ago.

The Acting Chairman asked if there was further public comment, and hearing none, called for Board deliberations. The Acting Chairman opened the deliberations by saying that he did not feel a 10-foot setback was at all reasonable, since all other property owners in the neighborhood had conformed. He said he was not in favor of going along with the proposal. Mr. Anderson said he agreed with the Acting Chairman.

Mr. Sikora said he thought, if they granted a 10-foot setback, it would appear that these houses were sitting directly on the road. He said he thought granting the request would have a negative effect on the neighborhood. He said the developer might have to look a little longer to find someone who wanted a lot with this type of topography, but that there were people who were looking for this type of contour.

The Acting Chairman stated that he sympathized with Mr. Frazier's position, but he thought there were other alternatives to deal with the situation.

Mr. Sterenberg noted that, when the area was platted, there did not seem to be any question that the subject properties were buildable, and that the subject properties were not platted that long ago. He said certainly the developer that platted the property went into this project with eyes wide open as would have any subsequent purchaser of the property, and he did not think it would be reasonable to not maintain the same setbacks for the integrity of the neighborhood.

Mr. Bushouse said it was telling that the original engineer's report did not note any inability to comply with the setbacks, and if the properties were not buildable, they should have been flagged at that time.

Ms. Stefforia said she thought the road had been curved in such a manner as to try to address the topography issues in the neighborhood.

The Acting Chairman asked if there was any further discussion. Hearing none, he called for a motion. Mr. Anderson made a motion to deny the request based upon the fact that the other properties in the neighborhood had met the 40-foot front setback, the problem was self-created and the spirit of the Zoning Ordinance would not be

observed if the variance was granted. Mr. Sterenberg seconded the motion. The Acting Chairman called for a vote on the motion, and the motion passed unanimously.

YOUNG – NON-CONFORMING PARCEL BUILDABLE FOR A DUPLEX – 2111 NORTH DRAKE ROAD – (PARCEL NO. 3905-12-480-065)

At 4:20 p.m. the Board returned to the Young variance request, and the applicant not having appeared, Mr. Sikora made a motion to adjourn the matter to August 24, 2010. The motion was seconded by Mr. Anderson. The Acting Chairman called for a vote on the motion, and the motion passed unanimously.

CRIPPIN – COMBINATION OF PARCELS AND TWO DWELLINGS ON A PARCEL – 7597, 7599 AND 7533 WEST ML AVENUE – (PARCEL NOS. 3905-27-330-012, 3905-27-330-016 AND 3905-27-330-020)

The Acting Chairman had Mr. Bushouse telephone the Crippins, and he was told that they were on their way. Therefore, the Board recessed from 3:40 p.m. to 3:50 p.m. When the Crippins arrived, the Board returned to their proposal, and the Acting Chairman again introduced the Crippins' variance request. The Acting Chairman called for a report from the Planning Department.

Mr. West submitted his report dated July 27, 2010, submitted his report to the Board, and the same is incorporated herein by reference.

Mr. Sikora asked about the requirement on page 3 of the report concerning the performance guarantee or irrevocable letter of credit, and asked if either one could be applied to the demolition cost. Mr. West said yes.

The Acting Chairman asked, once the demolition was complete, and the property combined and then divided, if it would be in compliance with the Township Zoning Ordinance. Mr. West indicated that it would. Mr. West noted that the request was prompted by a need to settle an open probate estate prior to the demolition of the house. The Acting Chairman asked to hear from the applicant.

Mr. Wayne Crippin introduced himself to the Board. He said his wife's family had owned this 80 acres for a number of years and that the current need to combine and re-divide the property was necessary due to the probating of his wife's mother's estate. He said they would like a variance so their son-in-law could live in the older farmhouse for up to a year and then have six months in which to demolish the house.

The Acting Chairman asked if there were any questions of the Crippins. Hearing none, he called for public comments. There being no public in attendance, public comment was dispensed with.

Mr. Sikora asked about the cost to split and re-divide the properties. Mr. West said the cost to split and re-divide the properties in the Township was about \$150. Attorney Porter noted that the cost of drawing up the deeds is approximately \$50 to \$75

per deed, but that was not the real issue. Attorney Porter noted that the parties were under a fairly strict time-line in which to probate an estate in Michigan, and therefore, the difficulty presented to the Crippins was the need to close the existing estate in compliance with Probate Court rules.

Mr. Bushouse noted that the Crippins' proposal was different from other proposals in that they were not putting up a new house and then tearing an old house down. They were recombining properties and then later tearing down an old house. Attorney Porter noted that was true, but that the real issue is the difficulty of trying to comply with Michigan law and the probate requirements on the one hand and being able to properly divide the property in accordance with the Township Zoning Ordinance. He said, if the Board was inclined to grant this request, the Board should specifically do so based upon the difficulties associated with probating this estate. In addition, Attorney Porter noted that they should have a date certain for the demolition of the old farmhouse.

Mr. Sikora said, if the Board did approve the Crippins' request, he wanted it very clear on the record as to why the Board was granting the request so as to not set an adverse precedent. He noted that a time-table for demolition of the second house should be set in any motion made.

The Acting Chairman asked if the applicants were open to providing the performance guarantee. Mr. and Mrs. Crippin indicated that they were. The Acting Chairman then asked what form the guarantee could take. Ms. Stefforia said it could be a cash guarantee or a letter of credit, and they could arrange that with the Planning Department.

The Acting Chairman asked if there was any further discussion. Hearing none, he said he would entertain a motion. Mr. Sikora made a motion to grant the approval for a temporary variance for a two-year period due to the practical difficulty of meeting the timely requirements of the Michigan Probate Code to marshal the assets, distribute the assets and close the estate of the applicant's mother, provided that the Crippins provide the Township with a performance guarantee in an amount equivalent to the cost of demolishing the dwelling at 7597 West ML Avenue. The motion was seconded by Mr. Bushouse. The Acting Chairman called for a vote on the motion. The motion passed unanimously.

Public Comment on Non-Agenda Items

None.

Any Other Business

None.

Adjournment

There being no further business to come before the Board, the Acting Chairman adjourned the meeting at approximately 4:15 p.m.

Minutes Prepared:
August 10, 2010

Minutes Approved:
_____, 2010